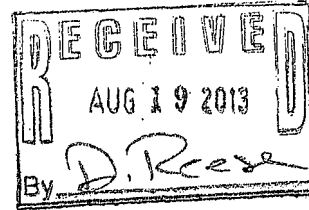


Bear Wilner-Nugent, Counselor and Attorney at Law LLC
621 SW Morrison Street, Suite 1250
Portland, Oregon 97205
(503) 351-2327
Fax (503) 323-7356
bwnlaw@gmail.com



IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

WHITNEY ANNE-MARIE ORLANDO,)
)
Plaintiff,)
)
v.)
)
PORTLAND STATE UNIVERSITY, an)
Oregon public university, and MARCIA)
KLOTZ,)
Defendants.)

Case No. 130812007

SUMMONS

ATTENTION: YOU ARE BEING SUED FOR MONEY DAMAGES. You must appear and defend this action within 30 days from the date of service. If you fail to do so, plaintiff will apply to the court for the relief demanded in the attached complaint.

NOTICE TO DEFENDANTS:
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CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal document called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

ISSUED August 19, 2013,

A handwritten signature in black ink, appearing to be "Bear Wilner-Nugent", written over a horizontal line.

Bear Wilner-Nugent, OSB #044549
Attorney for Plaintiff

AUG 19 2013

I HEREBY CERTIFY THAT THE
 FOREGOING IS A TRUE COPY
 OF THE ORIGINAL.

ATTORNEY FOR plaintiff

Bear Wilner-Nugent, Counselor and Attorney at Law LLC
 621 SW Morrison Street, Suite 1250
 Portland, Oregon 97205
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Plaintiff,)

v.)

PORTLAND STATE UNIVERSITY, an)
 Oregon public university, and MARCIA)
 KLOTZ,)

Defendants.)

Case No. 130812007

COMPLAINT

(Intentional Infliction of Emotional Distress,
 Sexual Harassment, Negligence, Retaliation)

CLAIM NOT SUBJECT TO
 MANDATORY ARBITRATION

JURY TRIAL REQUESTED
 (amount prayed for: \$1,250,000)

Plaintiff alleges as follows:

GENERAL ALLEGATIONS

1

Defendant Portland State University ("PSU") is an Oregon public university that has at all times mentioned herein actively operated undergraduate and graduate degree-conferring university programs from its campus located in Portland, Multnomah County, Oregon. Prior to January 1, 2012, Oregon state law designated PSU as an agency of the State of Oregon. On

January 1, 2012, Oregon Senate Bill 242 (2011) re-designated PSU as a public university operating under the authority of the Oregon University System.

2

Defendant Marcia Klotz ("Klotz") is an adult who has at all times mentioned herein been employed by PSU as an Assistant Professor in the Department of English, College of Liberal Arts and Sciences. Klotz is and has been at all times relevant an agent and employee of PSU, and all of her acts alleged herein were done within the course and scope of that agency and employment.

3

Plaintiff Whitney Anne-Marie Orlando ("Orlando") is, and has been at all times mentioned herein, an adult residing in the state of Oregon and a student at PSU. Plaintiff began her studies at PSU in 2006.

4

On April 4, 2012, PSU adopted and promulgated a Prohibited Discrimination and Harassment Policy, which in part provides as follows:

IV. Definitions [...]

2.0 Discriminatory Harassment:

Discriminatory Harassment means verbal or physical conduct by a student, faculty or staff based on a Protected Class or Protected Classes that is so severe, persistent or pervasive that it unreasonably interferes with or limits a student, faculty, staff, volunteer or PSU community member's ability to participate in or benefit from the university's educational and/or employment opportunities, programs or activities. Discriminatory Harassment includes Sexual Harassment.

3.0 Sexual Harassment:

Sexual Harassment refers to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic experience; or

- Submission to or rejection of such conduct is used as a basis for employment, salary, or other benefit changes affecting an employee or academic decisions affecting a student; or
- Such conduct unreasonably interferes with an individual's work or academic performance or creates an intimidating, hostile, or offensive working environment.

Examples of inappropriate behavior include: sexual or derogatory comments; grabbing or touching parts of the body; and sending letters, notes, cartoons, emails or audio messages of a sexually suggestive nature. Sexual harassment does not refer to occasional compliments of a socially acceptable nature. [...]

V. Policy/Procedures

1.0 Policy.

Discrimination or harassment based on a Protected Class or Protected Classes is strictly prohibited by PSU. [...]

7.0 Non-Retaliation.

No person shall retaliate against an individual for reporting discrimination or harassment, filing a complaint, participating in an investigation, participating in resolution of a complaint or any other activity protected under this policy, regardless of the outcome of the concern or complaint.

Any act of retaliation or reprisal violates this policy and will be treated as a separate matter. Anyone found to have retaliated against someone making use of this policy will be subject to corrective actions, up to and including severance of any relationship with Portland State University.

At some time before 2009, PSU adopted and promulgated a Policy Concerning Consensual Relationships, providing in part that:

The University recognizes that two consenting adults should be free to conduct a personal relationship if they so wish; however, if a consensual relationship should develop between an instructor or supervisor and a student or supervisee, where a power differential exists, the instructor or supervisor should report the matter, as soon as possible, to his or her immediate supervisor, i.e.; Department Chair, Professor in charge of the course, the unit supervisor, etc. This immediate supervisor, in consultation with the Director of Affirmative Action, will immediately make arrangements so that the official determination(s) affecting the terms and conditions of employment, study, or progress in a program of the person(s) involved in the consensual relationship can be carried out under the

1 direction of a competent objective third party(s). This should be carried out in a
2 manner that maintains the highest degree of confidentiality possible.

3
4 It should be made clear that the instructor, mentor, tutor, or supervisor should not,
5 thereafter, be allowed to have undirected responsibility for supervising,
6 evaluating, or grading the consensual relationship partner's performance. This is
7 due to the possibility of residual feelings resulting from the consensual
8 relationship, which could preclude impartiality.

9
10 All instructors, supervisors, students, and supervisees should understand that these
11 situations are of concern to Portland State University. It is the instructors and
12 supervisors who, by the virtue of their special power and responsibility, will bear
13 the burden of accountability in such cases. There are substantial risks in an
14 apparently consensual relationship where a power differential exists, even if the
15 conflict of interest issues are resolved, involving potential charges of sexual
16 harassment and/or violations of University policy. Such consensual relationships
17 have the potential for very serious consequences and should be avoided.

18
19 Where such relationships cannot be, or are not avoided, this policy mandates the
20 declaration to and intervention by a supervising authority, for the protection of
21 both parties involved in the consensual relationship. [...]

22
23 6

24 During her employment as a professor at PSU, Klotz was obligated by university policy
25 to refrain from engaging in sexual harassment, entering or maintaining a consensual relationship
26 in which a power differential existed, and from supervising the work or academic performance of
27 a relationship partner. Nonetheless, Klotz engaged in an intimate relationship with plaintiff and
28 later supervised plaintiff's academic performance during plaintiff's participation in the Robert E.
29 McNair Scholars Program ("McNair") at PSU.

30
31 7

32 In the professional relationship developed between Klotz and plaintiff, Klotz had actual
33 or apparent authority over plaintiff or the power to affect plaintiff's interests.

34
35 8

36 Plaintiff first met and interacted with Klotz in an English course plaintiff attended

1 entitled *Feminist Literature*, taught by Klotz in Fall 2007. During PSU's Fall 2009 term, plaintiff
2 attended a seminar taught by Klotz titled *The Erotics of Power*. Klotz's *Erotics of Power* seminar
3 primarily concerned representations in literature of sadomasochism, defined by course materials
4 as a set of erotic practices associated with pain, unequal power relations, and humiliation.
5 Plaintiff also participated in a Spring 2011 independent study class with Klotz entitled *Privacy*
6 *Rights*.

9

8 In October 2009, plaintiff contacted Klotz via Klotz's PSU e-mail account.
9 Plaintiff's initial e-mails to Klotz discussed topics and materials related to the *Erotics of*
10 *Power* course. In a follow-up E-mail, plaintiff also informed Klotz about a documentary
11 film concerning Insex, a website featuring graphic and pornographic bondage,
12 domination, and sadomasochistic ("BDSM") content, which plaintiff felt was related to
13 materials discussed in Klotz's course. Following Klotz's expressed interest in the topic,
14 plaintiff revealed to Klotz that she had previously worked as a bondage pornography
15 model and provided Klotz with several non-explicit photographs of her head and face
16 taken during plaintiff's most recent modeling shoot. Klotz complimented plaintiff on the
17 photographs, asked questions about the shoot, and expressed interest in attending future
18 modeling sessions involving plaintiff.

10

20 Between October 2009 and December 2012, plaintiff and Klotz continued to
21 correspond via electronic mail, eventually exchanging over 200 electronic messages
22 concerning subjects ranging from course-related questions and Klotz's professional work
23 to sexual topics, BDSM, and the relationship between plaintiff and Klotz. Klotz's

1 interactions with plaintiff during this period were designed and intended to encourage
2 plaintiff to share sexually oriented material and sensitive details of plaintiff's sexual life
3 with Klotz. Klotz's interest and participation in plaintiff's sexual life during this time
4 blurred professional and personal boundaries between herself and plaintiff.

5 11

6 During e-mail exchanges between the parties starting in 2009, and in response to
7 Klotz's expressed interest in viewing them, plaintiff provided Klotz with a number of
8 pictures depicting plaintiff posing for BDSM-themed websites and/or participating in
9 bondage-related activities. Many of these pictures depicted plaintiff in nude or sexually
10 explicit poses. Klotz encouraged plaintiff to continue sharing materials of a sexual nature
11 by complimenting the photographs, asking questions about their production, and
12 indicating her interest in receiving additional materials from plaintiff.

13 12

14 During the parties' 2009 e-mail exchanges, plaintiff described to Klotz how, at the
15 age of 13, she had suffered sexual abuse at the hands of a school instructor, and that this
16 abuse had deeply affected plaintiff's life thereafter. Thus, Klotz knew or should have
17 known that plaintiff would be especially impacted by sexual attention directed to her by
18 an academic supervisor or mentor. Instead of curtailing the sexual aspects of her
19 relationship with plaintiff, however, Klotz encouraged plaintiff to continue sharing
20 information relating to her sexuality and BDSM experiences. During this time, Klotz
21 used plaintiff's connections to producers of BDSM-themed materials in order to find
22 interview subjects and obtain material for inclusion in Klotz's academic papers. Klotz
23 also used plaintiff's connections to persons active in the BDSM community in an attempt

1 to locate new sexual partners interested in BDSM-style sexual encounters.

2 13

3 On January 17, 2010, plaintiff, Klotz, and Klotz's husband gathered to watch a
4 screening of the Insex documentary plaintiff had recommended to Klotz. The sexually
5 charged atmosphere surrounding the documentary viewing and Klotz's treatment of
6 plaintiff during and after this screening led plaintiff to feel that her relationship with
7 Klotz was becoming increasingly romantic and sexualized. Plaintiff was uncomfortable
8 with this escalating level of sexual tension in her relationship with Klotz.

9 14

10 Between October 2009 and January 2011, Klotz wrote an academic paper about
11 Insex entitled "It's Not Really Porn: Insex and the Revolution in Technological
12 Interactivity." Klotz informally consulted with plaintiff about the content of the paper and
13 included references to plaintiff in the finished paper. In the paper, Klotz referred to
14 plaintiff as her student and included sensitive information about plaintiff's sexual
15 experiences, although plaintiff was not identified by name.

16 15

17 Although Klotz used research about plaintiff's sexual experiences obtained from
18 interacting with plaintiff in Klotz's "It's Not Really Porn" paper, Klotz failed to inform
19 plaintiff in advance that Klotz intended to publicize plaintiff's experiences in the paper.
20 Klotz also failed to obtain plaintiff's informed, written consent to participate in Klotz's
21 research, as required by relevant PSU policy. As a result, Klotz revealed and published
22 private and personal details of plaintiff's intimate life in her academic paper without
23 plaintiff's authorization to do so.

16

As early as 2009, Klotz admitted to plaintiff that she had allowed her relationship with plaintiff to exceed boundaries of professional decorum. Even though Klotz acknowledged these boundary issues with plaintiff, however, she continued to exchange sexually oriented material with plaintiff and continued to permit plaintiff to disclose information of a sexual nature to her. Although PSU policy required Klotz to disclose her inappropriate relationship with plaintiff to her supervisor, Klotz never so disclosed.

17

In April 2010, Klotz began to route portions of her E-mail correspondence with plaintiff through her personal E-mail account, instead of her university-provided work E-mail account. Klotz's decision to move her correspondence with plaintiff to a private E-mail account allowed Klotz to conceal inappropriate messages and material from her employer PSU. During her e-mail exchanges with plaintiff, Klotz consistently encouraged plaintiff to develop the romantic and sexual aspects of her relationship with Klotz as a method of gaining or maintaining power over plaintiff. Klotz encouraged plaintiff to explore sexual and BDSM-related subjects with her, including discussing aspects of plaintiff's childhood sexual abuse. Klotz admitted to finding plaintiff's earlier sexual abuse erotic, and expressed an interest in replicating aspects of that abuse with plaintiff in a BDSM context. To illustrate her erotic interest in her partners' sexual trauma, Klotz shared with plaintiff details of Klotz's sexual interactions with her submissive male partner that included reenactments of that male partner's childhood sexual abuse at the hands of his father. Plaintiff believed that Klotz was attempting to recruit plaintiff to participate in similar kinds of sexual encounters with Klotz.

18

During her interactions with plaintiff, Klotz used her authority as plaintiff's teacher and mentor in an attempt to influence plaintiff's studies and keep plaintiff academically focused on topics of sexual interest to Klotz. Klotz sought to convince plaintiff that plaintiff would only achieve academic success by continuing to work on BDSM-related topics and by developing a close academic relationship with Klotz. Klotz attempted to harness plaintiff's interest in academic and personal success in order to manipulate plaintiff, to keep plaintiff's relationship with Klotz in a state of sexual and romantic tension, to continue obtaining private sexual information from plaintiff for Klotz's benefit, and to entice plaintiff and gratify Klotz by sharing salacious details of Klotz's sexual life.

19

On January 8, 2010, Klotz notified plaintiff that she wanted to recommend plaintiff for the McNair Scholars Program at PSU. McNair is a program funded by the United States Department of Education, and is designed to prepare undergraduate students from minority or first-generation college student backgrounds for doctoral studies by allowing participation in research and other scholarly activities. In the spring of 2011, plaintiff began to apply for the McNair program. Klotz assisted plaintiff during this process and served as her project mentor.

20

As plaintiff prepared her application for the McNair program, Klotz steered plaintiff toward selecting a paper topic related to reporting sexual abuse of minor children, and specifically toward a project requiring plaintiff to conduct research on her

1 own past sexual abuse. Even though Klotz was or should have been aware of the risks to
2 plaintiff's psychological state posed by conducting research on her own previously
3 disclosed history of childhood sexual trauma, Klotz nonetheless encouraged plaintiff to
4 undertake the project. Plaintiff submitted her application for the McNair program in the
5 fall of 2011, listing her proposed topic as *Disavowed Power: The Experiences of Early*
6 *Adolescents Reporting Adult-Child Sex to Law Enforcement*. Plaintiff was accepted into
7 the McNair program on November 29, 2011 and officially began work on program
8 requirements on January 1, 2012. Between November 2011 and June 2012, plaintiff and
9 Klotz exchanged a number of e-mails about the McNair project and met to discuss the
10 project in person.

11 21

12 In the spring of 2012, plaintiff began to experience significant stress and anxiety
13 triggered by the interaction of her work on her McNair paper and her history of childhood
14 sexual abuse. In order to satisfy Klotz's interest in work relating to plaintiff's history of
15 sexual abuse, plaintiff had obtained and reviewed the trial court's case file created during
16 the criminal prosecution of her middle school teacher, whom plaintiff had accused of
17 molesting her. Many of the documents in the trial court's file contained sensitive or
18 emotionally charged information concerning plaintiff's sexual abuse, some of which
19 plaintiff had never previously seen, and which caused plaintiff significant distress and
20 anxiety. Plaintiff also obtained and reviewed audiotapes of other contemporary child sex
21 abuse prosecutions in Multnomah County, which again caused plaintiff to experience
22 anxiety and stress resulting from her own history of abuse.

22

During this period of research in Spring 2012, plaintiff began to reassess her personal life and academic work for the McNair program. Plaintiff realized that she was uncomfortable with the heavily sexual tone of her relationship with Klotz, and that Klotz's insensitivity to plaintiff's childhood sexual trauma and pressure to complete plaintiff's McNair research on sexually explicit topics amounted to sexual harassment. Plaintiff attempted to step back from her relationship with Klotz, including by deescalating the sexual tension in their relationship and reevaluating the scope of her McNair childhood sexual abuse research.

23

After plaintiff attempted to rein in her sexually charged relationship with Klotz and to shift the focus of her McNair research away from childhood sexual abuse, plaintiff found that Klotz was no longer interested in providing her with mentorship or assistance in completing the McNair program. Although McNair program guidelines provide that professor mentors should work intensively with their McNair supervisees and meet approximately once per week, Klotz failed to properly supervise plaintiff's work during the summer of 2012, and plaintiff and Klotz met to discuss plaintiff's McNair project no more than once during that period.

24

On September 28, 2012, plaintiff e-mailed Klotz to inform her that plaintiff had been admitted to the hospital and was suffering from anxiety symptoms including an irregular heart rate. Plaintiff attributed these symptoms to stress caused by the stress of researching topics related to her childhood sexual abuse, and discussed the possibility of

1 modifying her McNair project to find a topic that would be less stressful and easier to
2 complete. Plaintiff asked Klotz to request an extension of the project's due date and to
3 change the topic of her paper. Plaintiff's extension request was eventually granted, but
4 plaintiff continued to feel pressure from Klotz to complete the McNair project on the
5 original topic of sexual abuse.

6 25

7 Following plaintiff's hospitalization and Klotz's continuing pressure thereafter to
8 complete a paper related to her sexual abuse, plaintiff realized that she would have to
9 cease contact with Klotz in order to protect her physical and mental health. Plaintiff
10 began to distance herself from Klotz by ceasing E-mail contact with her and looking for
11 alternative topics to write about for her McNair paper. On December 20, 2012, plaintiff
12 e-mailed Klotz to inform her that she could no longer conduct research into the child
13 sexual abuse topic she had previously been working on, and was interested in changing
14 her research focus to consider experimental research designs for stress management. On
15 January 31, 2013, plaintiff e-mailed Klotz to inform her that plaintiff had completed an
16 alternate project in the field of Predictive Analytics under the tutelage of another mentor,
17 a government research scientist. Plaintiff also sought approval from PSU's McNair
18 program to conclude Klotz's role as her McNair mentor. On February 7, 2013, plaintiff e-
19 mailed Klotz a letter from her new project mentor along with a copy of the McNair paper
20 plaintiff had written entitled "Indication and Warning Methodology."

21 26

22 On February 15, 2013, Klotz e-mailed plaintiff to inform her that Klotz would not
23 accept plaintiff's "Indication and Warning Methodology" project for McNair program

1 credit. Instead, Klotz recommended that plaintiff complete research on resources
2 available to women in the Portland area who are leaving sex work or on her original
3 topic. Klotz also recommended that plaintiff submit an explanation she wrote for a
4 McNair presentation of her original topic. Klotz subsequently contacted PSU's McNair
5 program coordinator and indicated that Klotz would not approve plaintiff's project, as it
6 allegedly did not meet the program's academic requirements. However, Klotz never
7 identified which of the McNair academic requirements were not met by plaintiff's
8 project. Klotz also told plaintiff and PSU's McNair program coordinator that she believed
9 plaintiff's paper had been plagiarized, in that she thought the paper did not resemble
10 plaintiff's writing and was too polished for plaintiff to have completed on her own.

11 27

12 As a direct and proximate result of defendants' conduct as alleged above,
13 plaintiff was subjected to such extreme stress and anxiety during the course of her
14 McNair research that she was hospitalized with physiological responses to that stress
15 including an irregular heartbeat. Plaintiff's senses of wellbeing, self-worth, and trust in
16 her academic supervisors have been irremediably injured by Klotz's ongoing campaign
17 of sexual exploitation. Plaintiff has been publicly embarrassed and humiliated and
18 incurred injury to her reputation in her academic and professional community. Further,
19 plaintiff suffered additional stress, anxiety, humiliation, and worry when Klotz
20 summarily rejected her McNair project because it did not reflect the sexually themed
21 subjects of interest to Klotz. Finally, plaintiff's sense of well-being and self-worth has
22 been shattered, and her ability to engage in healthy, adult relationships has been
23 compromised by Klotz's manipulation. Plaintiff has incurred economic damages for lost

1 future income potential in the amount of \$250,000 and noneconomic damages in the
2 amount of \$1,000,000, exclusive of her attorney fees and costs.

3
4 **FIRST CLAIM FOR RELIEF**

5 **(Intentional Infliction of Emotional Distress)**

6 28

7 Plaintiff re-alleges and incorporates each allegation contained in paragraphs 1-27.

8 29

9 The above-described conduct by Klotz constituted an extraordinary transgression of the
10 bounds of socially tolerable conduct, and was intended to cause severe emotional distress, or, in
11 the alternative, was done with knowledge that such distress was substantially certain to result.

12 30

13 This conduct did cause severe emotional distress, including physical illness, to plaintiff,
14 including the consequences set forth in paragraph 27.

15 31

16 Therefore, plaintiff is entitled to economic damages in the amount of \$250,000 and
17 noneconomic damages in the amount of \$1,000,000.

18
19 **SECOND CLAIM FOR RELIEF**

20 **(Sexual Harassment – State Law)**

21 32

22 Plaintiff re-alleges and incorporates each allegation contained in paragraphs 1-27.
23

33

PSU is a place of public accommodation within the meaning of ORS 659A.400(1).

34

The above-described conduct by defendants constituted the denial of full and equal accommodations, advantages, facilities and privileges in a place of public accommodation on the basis of sex, in violation of ORS 659A.403(3).

35

Each named defendant aided and abetted each other named defendant, and all of them, in making a distinction, discrimination, or restriction against plaintiff's enjoyment of the public accommodation afforded by PSU on account of sex, in violation of ORS 659A.406.

36

This denial, distinction, discrimination, or restriction injured plaintiff as described in paragraph 27.

37

Therefore, plaintiff is entitled to economic damages in the amount of \$250,000 and noneconomic damages in the amount of \$1,000,000.

THIRD CLAIM FOR RELIEF

(Sexual Harassment – Federal Law)

38

Plaintiff re-alleges and incorporates each allegation contained in paragraphs 1-27.

39

PSU receives funds from the United States government in the form of grants and loans to

1 support its students' education.

2 40

3 Plaintiff, while a PSU student, was subjected to discrimination based on sex, including
4 sexual abuse and sexual harassment, that was so severe, pervasive, and objectively offensive that
5 it deprived plaintiff of access to the educational opportunities or benefits provided by PSU, in
6 violation of 20 USC §1681 *et seq.*

7 41

8 PSU and its agents and employees had actual knowledge of this discrimination.

9 42

10 PSU and its agents and employees were deliberately indifferent to this discrimination.

11 43

12 This discrimination injured plaintiff as described in paragraph 27.

13 44

14 Therefore, plaintiff is entitled to economic damages in the amount of \$250,000,
15 noneconomic damages in the amount of \$1,000,000, and payment by PSU of her reasonable and
16 necessary attorney fees.

17
18 **FOURTH CLAIM FOR RELIEF**

19 **(Negligence)**

20 45

21 Plaintiff re-alleges and incorporates each allegation contained in paragraphs 1-27.

22 46

23 PSU and its agents had a duty to refrain from hiring and retaining employees who would

sexually harass PSU's students and a duty to supervise its employees in a manner such that they would refrain from sexually harassing PSU's students.

47

The above-described conduct constituted a breach of those duties by PSU.

48

This breach caused injuries to plaintiff as described in paragraph 27.

49

Therefore, plaintiff is entitled to economic damages in the amount of \$250,000 and noneconomic damages in the amount of \$1,000,000.

FIFTH CLAIM FOR RELIEF

(Retaliation)

50

Plaintiff re-alleges and incorporates each allegation contained in paragraphs 1-27.

51

Klotz's rejection of plaintiff's research paper and subsequent baseless accusations of plagiarism and dishonesty constituted retaliation against plaintiff, as Klotz's actions were calculated to injure and defame plaintiff after plaintiff refused to permit further sexual harassment by Klotz.

52

Klotz's rejection of plaintiff's research paper and subsequent accusations of academic dishonesty caused plaintiff injuries as described in paragraph 27.

53

Therefore, plaintiff is entitled to economic damages in the amount of \$250,000 and noneconomic damages in the amount of \$1,000,000.

PRAYER FOR RELIEF

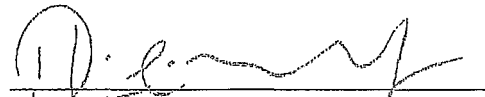
54

WHEREFORE, plaintiff prays for judgment against defendants Portland State University and Marcia Klotz in the amount of \$250,000 in economic damages, \$1,000,000 in noneconomic damages, and her reasonable attorney fees and costs and disbursements necessarily incurred herein.

55

FURTHER, plaintiff hereby gives notice of her intent to move to amend this complaint pursuant to ORS 31.725 to add a request for an award of punitive damages against Klotz.

RESPECTFULLY SUBMITTED August 19, 2013,


Bear Wilner-Nugent, OSB #044549
Attorney for Plaintiff

Bear Wilner-Nugent, Counselor and Attorney at Law LLC
621 SW Morrison Street, Suite 1250
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ISSUED August 19, 2013,



Bear Wilner-Nugent, OSB #044549
Attorney for Plaintiff

AUG 19 2013

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CLAIM NOT SUBJECT TO
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Plaintiff alleges as follows:

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Defendant Portland State University ("PSU") is an Oregon public university that has at all times mentioned herein actively operated undergraduate and graduate degree-conferring university programs from its campus located in Portland, Multnomah County, Oregon. Prior to January 1, 2012, Oregon state law designated PSU as an agency of the State of Oregon. On

January 1, 2012, Oregon Senate Bill 242 (2011) re-designated PSU as a public university operating under the authority of the Oregon University System.

2

Defendant Marcia Klotz ("Klotz") is an adult who has at all times mentioned herein been employed by PSU as an Assistant Professor in the Department of English, College of Liberal Arts and Sciences. Klotz is and has been at all times relevant an agent and employee of PSU, and all of her acts alleged herein were done within the course and scope of that agency and employment.

3

Plaintiff Whitney Anne-Marie Orlando ("Orlando") is, and has been at all times mentioned herein, an adult residing in the state of Oregon and a student at PSU. Plaintiff began her studies at PSU in 2006.

4

On April 4, 2012, PSU adopted and promulgated a Prohibited Discrimination and Harassment Policy, which in part provides as follows:

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3.0 Sexual Harassment:

Sexual Harassment refers to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic experience; or

- Submission to or rejection of such conduct is used as a basis for employment, salary, or other benefit changes affecting an employee or academic decisions affecting a student; or
- Such conduct unreasonably interferes with an individual's work or academic performance or creates an intimidating, hostile, or offensive working environment.

Examples of inappropriate behavior include: sexual or derogatory comments; grabbing or touching parts of the body; and sending letters, notes, cartoons, emails or audio messages of a sexually suggestive nature. Sexual harassment does not refer to occasional compliments of a socially acceptable nature. [...]

V. Policy/Procedures

1.0 Policy.

Discrimination or harassment based on a Protected Class or Protected Classes is strictly prohibited by PSU. [...]

7.0 Non-Retaliation.

No person shall retaliate against an individual for reporting discrimination or harassment, filing a complaint, participating in an investigation, participating in resolution of a complaint or any other activity protected under this policy, regardless of the outcome of the concern or complaint.

Any act of retaliation or reprisal violates this policy and will be treated as a separate matter. Anyone found to have retaliated against someone making use of this policy will be subject to corrective actions, up to and including severance of any relationship with Portland State University.

At some time before 2009, PSU adopted and promulgated a Policy Concerning Consensual Relationships, providing in part that:

The University recognizes that two consenting adults should be free to conduct a personal relationship if they so wish; however, if a consensual relationship should develop between an instructor or supervisor and a student or supervisee, where a power differential exists, the instructor or supervisor should report the matter, as soon as possible, to his or her immediate supervisor, i.e.; Department Chair, Professor in charge of the course, the unit supervisor, etc. This immediate supervisor, in consultation with the Director of Affirmative Action, will immediately make arrangements so that the official determination(s) affecting the terms and conditions of employment, study, or progress in a program of the person(s) involved in the consensual relationship can be carried out under the

1 direction of a competent objective third party(s). This should be carried out in a
2 manner that maintains the highest degree of confidentiality possible.

3
4 It should be made clear that the instructor, mentor, tutor, or supervisor should not,
5 thereafter, be allowed to have undirected responsibility for supervising,
6 evaluating, or grading the consensual relationship partner's performance. This is
7 due to the possibility of residual feelings resulting from the consensual
8 relationship, which could preclude impartiality.

9
10 All instructors, supervisors, students, and supervisees should understand that these
11 situations are of concern to Portland State University. It is the instructors and
12 supervisors who, by the virtue of their special power and responsibility, will bear
13 the burden of accountability in such cases. There are substantial risks in an
14 apparently consensual relationship where a power differential exists, even if the
15 conflict of interest issues are resolved, involving potential charges of sexual
16 harassment and/or violations of University policy. Such consensual relationships
17 have the potential for very serious consequences and should be avoided.

18
19 Where such relationships cannot be, or are not avoided, this policy mandates the
20 declaration to and intervention by a supervising authority, for the protection of
21 both parties involved in the consensual relationship. [...]

22
23 6

24 During her employment as a professor at PSU, Klotz was obligated by university policy
25 to refrain from engaging in sexual harassment, entering or maintaining a consensual relationship
26 in which a power differential existed, and from supervising the work or academic performance of
27 a relationship partner. Nonetheless, Klotz engaged in an intimate relationship with plaintiff and
28 later supervised plaintiff's academic performance during plaintiff's participation in the Robert E.
29 McNair Scholars Program ("McNair") at PSU.

30
31 7

32 In the professional relationship developed between Klotz and plaintiff, Klotz had actual
33 or apparent authority over plaintiff or the power to affect plaintiff's interests.

34
35 8

Plaintiff first met and interacted with Klotz in an English course plaintiff attended

1 entitled *Feminist Literature*, taught by Klotz in Fall 2007. During PSU's Fall 2009 term, plaintiff
2 attended a seminar taught by Klotz titled *The Erotics of Power*. Klotz's *Erotics of Power* seminar
3 primarily concerned representations in literature of sadomasochism, defined by course materials
4 as a set of erotic practices associated with pain, unequal power relations, and humiliation.
5 Plaintiff also participated in a Spring 2011 independent study class with Klotz entitled *Privacy*
6 *Rights*.

9

8 In October 2009, plaintiff contacted Klotz via Klotz's PSU e-mail account.
9 Plaintiff's initial e-mails to Klotz discussed topics and materials related to the *Erotics of*
10 *Power* course. In a follow-up E-mail, plaintiff also informed Klotz about a documentary
11 film concerning Insex, a website featuring graphic and pornographic bondage,
12 domination, and sadomasochistic ("BDSM") content, which plaintiff felt was related to
13 materials discussed in Klotz's course. Following Klotz's expressed interest in the topic,
14 plaintiff revealed to Klotz that she had previously worked as a bondage pornography
15 model and provided Klotz with several non-explicit photographs of her head and face
16 taken during plaintiff's most recent modeling shoot. Klotz complimented plaintiff on the
17 photographs, asked questions about the shoot, and expressed interest in attending future
18 modeling sessions involving plaintiff.

10

20 Between October 2009 and December 2012, plaintiff and Klotz continued to
21 correspond via electronic mail, eventually exchanging over 200 electronic messages
22 concerning subjects ranging from course-related questions and Klotz's professional work
23 to sexual topics, BDSM, and the relationship between plaintiff and Klotz. Klotz's

1 interactions with plaintiff during this period were designed and intended to encourage
2 plaintiff to share sexually oriented material and sensitive details of plaintiff's sexual life
3 with Klotz. Klotz's interest and participation in plaintiff's sexual life during this time
4 blurred professional and personal boundaries between herself and plaintiff.

5 11

6 During e-mail exchanges between the parties starting in 2009, and in response to
7 Klotz's expressed interest in viewing them, plaintiff provided Klotz with a number of
8 pictures depicting plaintiff posing for BDSM-themed websites and/or participating in
9 bondage-related activities. Many of these pictures depicted plaintiff in nude or sexually
10 explicit poses. Klotz encouraged plaintiff to continue sharing materials of a sexual nature
11 by complimenting the photographs, asking questions about their production, and
12 indicating her interest in receiving additional materials from plaintiff.

13 12

14 During the parties' 2009 e-mail exchanges, plaintiff described to Klotz how, at the
15 age of 13, she had suffered sexual abuse at the hands of a school instructor, and that this
16 abuse had deeply affected plaintiff's life thereafter. Thus, Klotz knew or should have
17 known that plaintiff would be especially impacted by sexual attention directed to her by
18 an academic supervisor or mentor. Instead of curtailing the sexual aspects of her
19 relationship with plaintiff, however, Klotz encouraged plaintiff to continue sharing
20 information relating to her sexuality and BDSM experiences. During this time, Klotz
21 used plaintiff's connections to producers of BDSM-themed materials in order to find
22 interview subjects and obtain material for inclusion in Klotz's academic papers. Klotz
23 also used plaintiff's connections to persons active in the BDSM community in an attempt

1 to locate new sexual partners interested in BDSM-style sexual encounters.

2 13

3 On January 17, 2010, plaintiff, Klotz, and Klotz's husband gathered to watch a
4 screening of the Insex documentary plaintiff had recommended to Klotz. The sexually
5 charged atmosphere surrounding the documentary viewing and Klotz's treatment of
6 plaintiff during and after this screening led plaintiff to feel that her relationship with
7 Klotz was becoming increasingly romantic and sexualized. Plaintiff was uncomfortable
8 with this escalating level of sexual tension in her relationship with Klotz.

9 14

10 Between October 2009 and January 2011, Klotz wrote an academic paper about
11 Insex entitled "It's Not Really Porn: Insex and the Revolution in Technological
12 Interactivity." Klotz informally consulted with plaintiff about the content of the paper and
13 included references to plaintiff in the finished paper. In the paper, Klotz referred to
14 plaintiff as her student and included sensitive information about plaintiff's sexual
15 experiences, although plaintiff was not identified by name.

16 15

17 Although Klotz used research about plaintiff's sexual experiences obtained from
18 interacting with plaintiff in Klotz's "It's Not Really Porn" paper, Klotz failed to inform
19 plaintiff in advance that Klotz intended to publicize plaintiff's experiences in the paper.
20 Klotz also failed to obtain plaintiff's informed, written consent to participate in Klotz's
21 research, as required by relevant PSU policy. As a result, Klotz revealed and published
22 private and personal details of plaintiff's intimate life in her academic paper without
23 plaintiff's authorization to do so.

16

As early as 2009, Klotz admitted to plaintiff that she had allowed her relationship with plaintiff to exceed boundaries of professional decorum. Even though Klotz acknowledged these boundary issues with plaintiff, however, she continued to exchange sexually oriented material with plaintiff and continued to permit plaintiff to disclose information of a sexual nature to her. Although PSU policy required Klotz to disclose her inappropriate relationship with plaintiff to her supervisor, Klotz never so disclosed.

17

In April 2010, Klotz began to route portions of her E-mail correspondence with plaintiff through her personal E-mail account, instead of her university-provided work E-mail account. Klotz's decision to move her correspondence with plaintiff to a private E-mail account allowed Klotz to conceal inappropriate messages and material from her employer PSU. During her e-mail exchanges with plaintiff, Klotz consistently encouraged plaintiff to develop the romantic and sexual aspects of her relationship with Klotz as a method of gaining or maintaining power over plaintiff. Klotz encouraged plaintiff to explore sexual and BDSM-related subjects with her, including discussing aspects of plaintiff's childhood sexual abuse. Klotz admitted to finding plaintiff's earlier sexual abuse erotic, and expressed an interest in replicating aspects of that abuse with plaintiff in a BDSM context. To illustrate her erotic interest in her partners' sexual trauma, Klotz shared with plaintiff details of Klotz's sexual interactions with her submissive male partner that included reenactments of that male partner's childhood sexual abuse at the hands of his father. Plaintiff believed that Klotz was attempting to recruit plaintiff to participate in similar kinds of sexual encounters with Klotz.

18

During her interactions with plaintiff, Klotz used her authority as plaintiff's teacher and mentor in an attempt to influence plaintiff's studies and keep plaintiff academically focused on topics of sexual interest to Klotz. Klotz sought to convince plaintiff that plaintiff would only achieve academic success by continuing to work on BDSM-related topics and by developing a close academic relationship with Klotz. Klotz attempted to harness plaintiff's interest in academic and personal success in order to manipulate plaintiff, to keep plaintiff's relationship with Klotz in a state of sexual and romantic tension, to continue obtaining private sexual information from plaintiff for Klotz's benefit, and to entice plaintiff and gratify Klotz by sharing salacious details of Klotz's sexual life.

19

On January 8, 2010, Klotz notified plaintiff that she wanted to recommend plaintiff for the McNair Scholars Program at PSU. McNair is a program funded by the United States Department of Education, and is designed to prepare undergraduate students from minority or first-generation college student backgrounds for doctoral studies by allowing participation in research and other scholarly activities. In the spring of 2011, plaintiff began to apply for the McNair program. Klotz assisted plaintiff during this process and served as her project mentor.

20

As plaintiff prepared her application for the McNair program, Klotz steered plaintiff toward selecting a paper topic related to reporting sexual abuse of minor children, and specifically toward a project requiring plaintiff to conduct research on her

1 own past sexual abuse. Even though Klotz was or should have been aware of the risks to
2 plaintiff's psychological state posed by conducting research on her own previously
3 disclosed history of childhood sexual trauma, Klotz nonetheless encouraged plaintiff to
4 undertake the project. Plaintiff submitted her application for the McNair program in the
5 fall of 2011, listing her proposed topic as *Disavowed Power: The Experiences of Early*
6 *Adolescents Reporting Adult-Child Sex to Law Enforcement*. Plaintiff was accepted into
7 the McNair program on November 29, 2011 and officially began work on program
8 requirements on January 1, 2012. Between November 2011 and June 2012, plaintiff and
9 Klotz exchanged a number of e-mails about the McNair project and met to discuss the
10 project in person.

21

12 In the spring of 2012, plaintiff began to experience significant stress and anxiety
13 triggered by the interaction of her work on her McNair paper and her history of childhood
14 sexual abuse. In order to satisfy Klotz's interest in work relating to plaintiff's history of
15 sexual abuse, plaintiff had obtained and reviewed the trial court's case file created during
16 the criminal prosecution of her middle school teacher, whom plaintiff had accused of
17 molesting her. Many of the documents in the trial court's file contained sensitive or
18 emotionally charged information concerning plaintiff's sexual abuse, some of which
19 plaintiff had never previously seen, and which caused plaintiff significant distress and
20 anxiety. Plaintiff also obtained and reviewed audiotapes of other contemporary child sex
21 abuse prosecutions in Multnomah County, which again caused plaintiff to experience
22 anxiety and stress resulting from her own history of abuse.

22

During this period of research in Spring 2012, plaintiff began to reassess her personal life and academic work for the McNair program. Plaintiff realized that she was uncomfortable with the heavily sexual tone of her relationship with Klotz, and that Klotz's insensitivity to plaintiff's childhood sexual trauma and pressure to complete plaintiff's McNair research on sexually explicit topics amounted to sexual harassment. Plaintiff attempted to step back from her relationship with Klotz, including by deescalating the sexual tension in their relationship and reevaluating the scope of her McNair childhood sexual abuse research.

23

After plaintiff attempted to rein in her sexually charged relationship with Klotz and to shift the focus of her McNair research away from childhood sexual abuse, plaintiff found that Klotz was no longer interested in providing her with mentorship or assistance in completing the McNair program. Although McNair program guidelines provide that professor mentors should work intensively with their McNair supervisees and meet approximately once per week, Klotz failed to properly supervise plaintiff's work during the summer of 2012, and plaintiff and Klotz met to discuss plaintiff's McNair project no more than once during that period.

24

On September 28, 2012, plaintiff e-mailed Klotz to inform her that plaintiff had been admitted to the hospital and was suffering from anxiety symptoms including an irregular heart rate. Plaintiff attributed these symptoms to stress caused by the stress of researching topics related to her childhood sexual abuse, and discussed the possibility of

1 modifying her McNair project to find a topic that would be less stressful and easier to
2 complete. Plaintiff asked Klotz to request an extension of the project's due date and to
3 change the topic of her paper. Plaintiff's extension request was eventually granted, but
4 plaintiff continued to feel pressure from Klotz to complete the McNair project on the
5 original topic of sexual abuse.

6 25

7 Following plaintiff's hospitalization and Klotz's continuing pressure thereafter to
8 complete a paper related to her sexual abuse, plaintiff realized that she would have to
9 cease contact with Klotz in order to protect her physical and mental health. Plaintiff
10 began to distance herself from Klotz by ceasing E-mail contact with her and looking for
11 alternative topics to write about for her McNair paper. On December 20, 2012, plaintiff
12 e-mailed Klotz to inform her that she could no longer conduct research into the child
13 sexual abuse topic she had previously been working on, and was interested in changing
14 her research focus to consider experimental research designs for stress management. On
15 January 31, 2013, plaintiff e-mailed Klotz to inform her that plaintiff had completed an
16 alternate project in the field of Predictive Analytics under the tutelage of another mentor,
17 a government research scientist. Plaintiff also sought approval from PSU's McNair
18 program to conclude Klotz's role as her McNair mentor. On February 7, 2013, plaintiff e-
19 mailed Klotz a letter from her new project mentor along with a copy of the McNair paper
20 plaintiff had written entitled "Indication and Warning Methodology."

21 26

22 On February 15, 2013, Klotz e-mailed plaintiff to inform her that Klotz would not
23 accept plaintiff's "Indication and Warning Methodology" project for McNair program

1 credit. Instead, Klotz recommended that plaintiff complete research on resources
2 available to women in the Portland area who are leaving sex work or on her original
3 topic. Klotz also recommended that plaintiff submit an explanation she wrote for a
4 McNair presentation of her original topic. Klotz subsequently contacted PSU's McNair
5 program coordinator and indicated that Klotz would not approve plaintiff's project, as it
6 allegedly did not meet the program's academic requirements. However, Klotz never
7 identified which of the McNair academic requirements were not met by plaintiff's
8 project. Klotz also told plaintiff and PSU's McNair program coordinator that she believed
9 plaintiff's paper had been plagiarized, in that she thought the paper did not resemble
10 plaintiff's writing and was too polished for plaintiff to have completed on her own.

11 27

12 As a direct and proximate result of defendants' conduct as alleged above,
13 plaintiff was subjected to such extreme stress and anxiety during the course of her
14 McNair research that she was hospitalized with physiological responses to that stress
15 including an irregular heartbeat. Plaintiff's senses of wellbeing, self-worth, and trust in
16 her academic supervisors have been irremediably injured by Klotz's ongoing campaign
17 of sexual exploitation. Plaintiff has been publicly embarrassed and humiliated and
18 incurred injury to her reputation in her academic and professional community. Further,
19 plaintiff suffered additional stress, anxiety, humiliation, and worry when Klotz
20 summarily rejected her McNair project because it did not reflect the sexually themed
21 subjects of interest to Klotz. Finally, plaintiff's sense of well-being and self-worth has
22 been shattered, and her ability to engage in healthy, adult relationships has been
23 compromised by Klotz's manipulation. Plaintiff has incurred economic damages for lost

1 future income potential in the amount of \$250,000 and noneconomic damages in the
2 amount of \$1,000,000, exclusive of her attorney fees and costs.

3
4 **FIRST CLAIM FOR RELIEF**

5 **(Intentional Infliction of Emotional Distress)**

6 28

7 Plaintiff re-alleges and incorporates each allegation contained in paragraphs 1-27.

8 29

9 The above-described conduct by Klotz constituted an extraordinary transgression of the
10 bounds of socially tolerable conduct, and was intended to cause severe emotional distress, or, in
11 the alternative, was done with knowledge that such distress was substantially certain to result.

12 30

13 This conduct did cause severe emotional distress, including physical illness, to plaintiff,
14 including the consequences set forth in paragraph 27.

15 31

16 Therefore, plaintiff is entitled to economic damages in the amount of \$250,000 and
17 noneconomic damages in the amount of \$1,000,000.

18
19 **SECOND CLAIM FOR RELIEF**

20 **(Sexual Harassment – State Law)**

21 32

22 Plaintiff re-alleges and incorporates each allegation contained in paragraphs 1-27.
23

33

PSU is a place of public accommodation within the meaning of ORS 659A.400(1).

34

The above-described conduct by defendants constituted the denial of full and equal accommodations, advantages, facilities and privileges in a place of public accommodation on the basis of sex, in violation of ORS 659A.403(3).

35

Each named defendant aided and abetted each other named defendant, and all of them, in making a distinction, discrimination, or restriction against plaintiff's enjoyment of the public accommodation afforded by PSU on account of sex, in violation of ORS 659A.406.

36

This denial, distinction, discrimination, or restriction injured plaintiff as described in paragraph 27.

37

Therefore, plaintiff is entitled to economic damages in the amount of \$250,000 and noneconomic damages in the amount of \$1,000,000.

THIRD CLAIM FOR RELIEF

(Sexual Harassment – Federal Law)

38

Plaintiff re-alleges and incorporates each allegation contained in paragraphs 1-27.

39

PSU receives funds from the United States government in the form of grants and loans to

1 support its students' education.

2 40

3 Plaintiff, while a PSU student, was subjected to discrimination based on sex, including
4 sexual abuse and sexual harassment, that was so severe, pervasive, and objectively offensive that
5 it deprived plaintiff of access to the educational opportunities or benefits provided by PSU, in
6 violation of 20 USC §1681 *et seq.*

7 41

8 PSU and its agents and employees had actual knowledge of this discrimination.

9 42

10 PSU and its agents and employees were deliberately indifferent to this discrimination.

11 43

12 This discrimination injured plaintiff as described in paragraph 27.

13 44

14 Therefore, plaintiff is entitled to economic damages in the amount of \$250,000,
15 noneconomic damages in the amount of \$1,000,000, and payment by PSU of her reasonable and
16 necessary attorney fees.

17
18 **FOURTH CLAIM FOR RELIEF**

19 **(Negligence)**

20 45

21 Plaintiff re-alleges and incorporates each allegation contained in paragraphs 1-27.

22 46

23 PSU and its agents had a duty to refrain from hiring and retaining employees who would

1 sexually harass PSU's students and a duty to supervise its employees in a manner such that they
2 would refrain from sexually harassing PSU's students.

3 47

4 The above-described conduct constituted a breach of those duties by PSU.

5 48

6 This breach caused injuries to plaintiff as described in paragraph 27.

7 49

8 Therefore, plaintiff is entitled to economic damages in the amount of \$250,000 and
9 noneconomic damages in the amount of \$1,000,000.

10
11 **FIFTH CLAIM FOR RELIEF**

12 **(Retaliation)**

13 50

14 Plaintiff re-alleges and incorporates each allegation contained in paragraphs 1-27.

15 51

16 Klotz's rejection of plaintiff's research paper and subsequent baseless accusations of
17 plagiarism and dishonesty constituted retaliation against plaintiff, as Klotz's actions were
18 calculated to injure and defame plaintiff after plaintiff refused to permit further sexual
19 harassment by Klotz.

20 52

21 Klotz's rejection of plaintiff's research paper and subsequent accusations of academic
22 dishonesty caused plaintiff injuries as described in paragraph 27.

53

Therefore, plaintiff is entitled to economic damages in the amount of \$250,000 and noneconomic damages in the amount of \$1,000,000.

PRAYER FOR RELIEF


54

WHEREFORE, plaintiff prays for judgment against defendants Portland State University and Marcia Klotz in the amount of \$250,000 in economic damages, \$1,000,000 in noneconomic damages, and her reasonable attorney fees and costs and disbursements necessarily incurred herein.

55

FURTHER, plaintiff hereby gives notice of her intent to move to amend this complaint pursuant to ORS 31.725 to add a request for an award of punitive damages against Klotz.

RESPECTFULLY SUBMITTED August 19, 2013,


Bear Wilner-Nugent, OSB #044549
Attorney for Plaintiff